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5 *Attorneys for Defendant American Family Mutual Insurance
Company, S.I.*

6 UNITED STATES DISTRICT COURT

7 DISTRICT OF ARIZONA

8 Terry Nickle,) No.
9)
10 Plaintiff,) **NOTICE OF REMOVAL**
vs.)
11)
12 American Family Mutual Insurance)
Company, S.I., a Wisconsin mutual)
13 corporation; John and Jane Does I-X; Black)
and White Corporations/Partnerships I-X,)
14 Defendants.)
15)
16)
17)
18)
19)
20)
21)

Defendant American Family Mutual Insurance Company, S.I. (“Defendant”) gives notice that it is removing this action from Maricopa County Superior Court to the United States District Court for the District of Arizona pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 for the following reasons:

22 A. **This Court Has Diversity Jurisdiction Pursuant to 28 U.S.C. § 1332.**

23 1. **There is complete diversity among the legitimate parties.**

24 (a) Plaintiff is an individual residing in the state of Arizona. *See*
25 Complaint in matter No. CV2017-014497, Superior Court of Arizona, Maricopa County
26

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1 ("Complaint") at ¶ 3, attached as Exhibit 1.

2 (b) Defendant is a Wisconsin corporation with its principal place of
3 business in Madison, Wisconsin.
4

5 **2. The Amount in Controversy Exceeds \$75,000.**

6 The determination of diversity jurisdiction is made as of the time of removal. *St.*
7 *Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *see also Rogers v.*
8 *Wall-Mart Stores, Inc.* 230 F.3d 868, 871 (6th Cir. 2000). Included in the calculation of the
9 jurisdictional minimum are general damages, special damages, punitive damages, and
10 attorneys' fees. *See Ansley v. Metropolitan Life Ins. Co.*, 215 F.R.D. 575 (D. Ariz. 2003);
11 *see also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir.
12 1998); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

13
14 Here, the evidence establishes by a preponderance of the evidence that the
15 jurisdictional minimum has been met. Plaintiff's last settlement demand was for the
16 \$100,000 UIM policy limits. That demand alone, exclusive of pre-judgment interest and
17 attorneys' fees, establishes that the amount in controversy meets the requirement for
18 diversity jurisdiction.
19

20
21 Based on the foregoing, Defendant has met its burden of establishing the
22 jurisdiction of this Court.
23

24 **B. This Notice of Removal is Timely.**

25 Plaintiff filed the complaint on November 20, 2017 and served it on American
26 Family through the Arizona Department of Insurance on December 12, 2017. Defendant

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1 American Family first received notice of the complaint upon its receipt from the
2 Department of Insurance on or after December 14, 2017. This Notice of Removal,
3 therefore, has been timely filed within 30 days of that date. *See* 28 U.S.C. § 1446(b).

4 **C.** Defendant has attached copies of the original Complaint, Summons, and Certificate
5 of Compulsory Arbitration and has no other court documents in its possession. *See*
6 Exhibits 1-3.

7 **D.** Defendant has concurrently filed a copy of this notice with the Arizona Superior
8 Court.

9 Defendant has served upon Plaintiff a copy of this notice.

10 DATED this day of January, 2018.

11 **TYSON & MENDES, LLP**

12 By: /s/
13 Lynn M. Allen
14 K. Michelle Ronan
15 *Attorneys for Defendant American Family*

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on January 11, 2018, I electronically transmitted the attached
18 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
19 Notice of Electronic Filing to the following CM/ECF Registrants:

20 Ryan J. Linder
21 Drew M. Gully
22 LINDER & GULLY, PLC
23 60 East Rio Salado Pkwy, Suite 900
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26 *Attorneys for Plaintiff*

By: /s/